

Case No. 85302

IN THE SUPREME COURT OF THE STATE OF NEVADA

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SIGAL CHATTAH, AN INDIVIDUAL

Plaintiff-Appellant,

v.

BARBARA K. CEGAVSKE, IN HER OFFICIAL CAPACITY AS
NEVADA SECRETARY OF STATE; AND JOHN T. KENNEDY,
AN INDIVIDUAL,

Defendants-Respondents.

APPELLANT SIGAL CHATTAH'S OPENING BRIEF

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APPELLANT'S NRAP 26.1 DISCLOSURE

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a), and must be disclosed. These representations are made in order that the judges of this Court may evaluate possible disqualification or recusal.

<u>Party</u>	<u>Counsel of Record on Appeal and at District Court</u>
SIGAL CHATTAH, (Real Person)	Joey Gilbert Law
BARBARA CEGAVSKE (Real Person)	Office of Nevada Attorney General
JOHN T. KENNEDY (Real Person)	Nathan Lawrence, Esq.

DATED this 15th day of September, 2022.

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STATUTES

NRS 34.170

NRS 34.320

NRS 34.330

NRS 228.010

NRS 293.124

NRS 293.2045

RULES

NRAP 17(A)(11)

NAP 17(B)

NRAP 21(3)(A)

This case is presumptively retained by the Supreme Court under NRAP 17(a)(11), because the principal issues herein raise questions of statewide public importance. The principal issue in this appeal is a determination of whether a disqualified candidate under NRS 228.010 may remain on the ballot, following AB 321, codified, allowing universal mail-in ballots, precluding NRS 293.2045 from granting proper relief. This case does not fall within any of the categories of the cases listed in NRAP 17(b) as presumptively assigned to the Court of Appeals.

RELIEF SOUGHT

Appellant SIGAL CHATTAH, hereby requests this Court overturn the denial of Appellant's Application for Temporary Restraining Order and Motion for Preliminary Injunction enjoining Defendant Cegavske from including Defendant John T. Kennedy's name on the November, 2022 General Election Ballot.

This Appeal is based upon the grounds that the Orders denying the Application for Temporary Restraining Order and Motion for Preliminary Injunction was without any legal or factual basis, thereby constituting a manifest abuse of discretion.

STATEMENT OF THE ISSUES PRESENTED

(1) Did the district court abuse its discretion in concluding that NRS 293.182 precluded Chattah from obtaining an injunction against the Nevada Secretary of State to remove a disqualified candidate from the November ballot;

(2) Did the district court abuse its discretion imputing Defendant Cegavske's failure and responsibility to notify Kennedy of NRS 228.010 qualification to Chattah;

(3) Did the district court abuse its discretion in adjudicating that having a disqualified candidate on the November ballot would not result in irreparable harm to Chattah and that Chattah did not have a likelihood of success on the merits;

(4) Did the district court err in accepting hearsay evidence that despite the fact that ballots were not printed, the public was to assume financial obligation of ballot correction;

STATEMENT OF FACTS

On November 6, 2018, current Attorney General Aaron D. Ford was elected as Nevada's Attorney General by a margin of half a percentage point and currently remains Attorney General for the State of Nevada.

On or about March 17, 2022, Plaintiff, Chattah, filed with the Secretary of State her Declaration of Candidacy for the Office of Attorney General, to run against incumbent Aaron Ford.

On March 10, 2022, Defendant John T. Kennedy presented himself to the Nevada Secretary of State office and filed his Declaration of Candidacy for the office of Nevada Attorney General.¹ According to Kennedy, he asked the women there if he needed to be an attorney for the position notified them that he wasn't an attorney.² Kennedy stated notices about running for office were outdated and did not reflect the new requirement that the candidate must be a member of the State Bar of Nevada.³ At said time, they accepted his Declaration of Candidacy

On June 16, 2022, Chattah prevailed in the Nevada Republican Primary election as the nominee in the Attorney General race to proceed to the General Election against incumbent Ford and Kennedy.

The qualifications for eligibility for the office of Attorney General are found in NRS 228.010 *entitled* Qualifications which provides:

No person shall be eligible to the Office of Attorney General unless the person:

1. Has attained the age of 30 years at the time of such election;

¹ See Appx Ex. 3 SC0061

² Id. at SC0063

³ [Supreme Court rejects writ to keep ineligible AG candidate off ballot | Las Vegas Review-Journal \(reviewjournal.com\)](https://www.reviewjournal.com/news/supreme-court-rejects-writ-to-keep-ineligible-ag-candidate-off-ballot/)

2. Is a qualified elector and has been a citizen resident of this State for 3 years next preceding the election; and
3. Is a member of the State Bar of Nevada in good standing.

Plaintiff is a member in good standing with the State Bar of Nevada since 2002. Defendant Kennedy is not licensed nor has even been licensed as an attorney in the State of Nevada, nor is he a member of the State Bar in Nevada in good standing. This fact is stipulated and conclusive.

On July 26, 2022, Plaintiff notified Defendant Cegavske's office that Kennedy is not a member of the State Bar of Nevada by filing an Election Integrity Complaint.⁴ On same day, Plaintiff also notified Nevada Attorney General's office and provided the office of the Nevada Attorney General the Election Integrity Complaint. [See Appx. Ex2 SC0027-0037]

After almost 3 weeks of inaction or investigation into same, following a second written inquiry by Chattah, on August 17, 2022, Defendant, Secretary of State issued a correspondence that Chattah's time to object to a candidate qualification had expired on April 5, 2022 under NRS 193.182 and refused to take further action.⁵

At the outset, Kennedy notified the Secretary of State on March 10, 2022, that he was not qualified. Second, as Kennedy noted, state notices at the office of

⁴ See Appx EX. 2 Appx SC0038-0039

⁵ Id.

Secretary of State about running for office were outdated and did not reflect the new requirement that the candidate must be a member of the State Bar. These two failures by the Secretary of State's office alone, should preclude any culpability of Chattah's delay under NRS 193.182.

Further, even though the Secretary of State was placed on notice on July 26, 2022, she did nothing to mitigate the removal of a disqualified candidate, despite having over 6 weeks, prior to the September 6, 2022 hearing to notify Runbeck Election Services of same.

Defendant Cegavske failed under NRS 193.124 to enforce NRS 228.010, twice before the deadline under NRS 193.182. This failure to verify that Defendant Kennedy had in fact met the qualifications of NRS 228.010 to run for office, placed an onerous burden on Chattah to engage in such verification.

Having a disqualified candidate on the ballot poses a threat to the integrity of the election for the Office of Attorney General, and can compromise the margin of victory for the qualified candidates in November, 2022.

NRS 293.2045 *entitled* Remedies in preelection actions challenging candidates who fail to meet qualifications for office; disqualification from taking office; removal from ballot or notification to voters at polling places; applicability provides as follows:

1. In addition to any other remedy or penalty provided by law, but except as otherwise provided in NRS 293.1265, if a court of competent

jurisdiction finds in any preelection action that a person who is a candidate for any office fails to meet any qualification required for the office pursuant to the Constitution or laws of this State:

- (a) **The name of the person must not appear on any ballot for the election for which the person filed a declaration of candidacy**, except that if the statutory deadline for making changes to the ballot has passed, the provisions of subsection 2 apply; and
- (b) The person is disqualified from entering upon the duties of the office for which the person filed a declaration of candidacy.

2. If the name of a person who is disqualified from entering upon the duties of an office pursuant to subsection 1 appears on a ballot for the election because the statutory deadline for making changes to the ballot has passed, **the appropriate election officers shall post a sign at each polling place where the person's name will appear on the ballot informing voters that the person is disqualified from entering upon the duties of the office.**

3. The provisions of this section apply to any preelection action brought to challenge a person who is a candidate for any office on the grounds that the person fails to meet any qualification required for the office pursuant to the Constitution or laws of this State, including, without limitation, any action brought pursuant to NRS 281.050, 293.182 or 293C.186 or any action brought for:

- (a) Declaratory or injunctive relief pursuant to chapter 30 or 33 of NRS;
- (b) Writ relief pursuant to chapter 34 of NRS; or
- (c) Any other legal or equitable relief.

NRS 293.2045 does not contemplate the changes to Nevada's elections brought by AB 321, in 2021 allowing for universal mail-in ballots. In 2022, Nevada's Primary Election Results demonstrate that 266,057 (56.7%) percent of total voters voted by Mail In Ballots.⁶ Therefore, the recourse allowable under NRS 293.2045 in posting signs at all polling locations would have no effect on a

⁶ Voter Turnout - Nevada Secretary of State 2022 Primary Election Results (nv.gov)

disqualified candidate appearing on mail in ballots, which would conclusively prejudice Chattah in the Attorney General race.⁷ At a minimum there should be some sort of modification of the ballot or insert to allow disclosure to mail in voters that Kennedy is disqualified.

Furthermore, Defendants, after given the opportunity by the District Court, failed to provide any evidence that mail in ballots have been printed or were submitted for printing. They also failed to provide any evidentiary basis as to what an arbitrary \$179,520.00 costs include to Runbeck Election Services involved and most important failed to provide an explanation as to why Runbeck Election Services was not advised before August 22, 2022, despite being placed on notice on July 26, 2022, that a disqualified candidate should be removed from the ballot. In its determination, the Court relied on hearsay testimony from a deputy of the Secretary of State and no admissible-non-hearsay evidence from Runbeck Election Services to support any finding what \$179,520.00 would include.

Allowing a disqualified candidate remain on the ballot severely prejudices Plaintiff and the integrity of the election for the office of Nevada Attorney General. The absurdity of having a known disqualified candidate, whom has asked the Court

⁷ It is significant to note that with the posting of signs in the precincts under NRS 293.2045, Stewart Mackie the disqualified candidate for Nevada Attorney General in the Democrat primary, still received 9,000 votes in the 2022 Democrat primary election.

to be removed from the ballot and withdrawn from the race, undermines public confidence in the election process.

Further, the concept of forcing a candidate to challenge another candidate's qualifications when the resources, knowledge and responsibility to do so belong to the Secretary of State, is a ridiculously onerous burden to place on someone that is not privy to notice and verification of qualifications.

It is clear that the intent of NRS 193.124 does not deputize the electors or candidates to enforce election laws of the State of Nevada, including verification of qualification of a candidate under NRS 228.010. As noted *infra*, as a result of Cegavske's failure to enforce NRS 228.010 during the 2022 Democratic primary, disqualified candidate Stuart MacKie, had drawn 17,047 votes representing 12.3% of Democratic primary voters from incumbent Aaron Ford; almost four times more than he won his 2018 race by.

ARGUMENT

I. STANDARD OF REVIEW OF PRELIMINARY INJUNCTION

1. Abuse of Discretion

An abuse of discretion is a plain error, discretion exercised to an end not justified by the evidence, a judgment that is clearly against the logic and effect of the facts as are found.” *Rabkin v. Oregon Health Sciences Univ.*, 350 F.3d 967,

977 (9th Cir. 2003) (citation and internal quotation marks omitted); *see also In re Korean Air Lines Co., Ltd.*, 642 F.3d 685, 698 n.11 (9th Cir. 2011).

Under the abuse of discretion standard, a reviewing court cannot reverse absent a definite and firm conviction that the district court committed a clear error of judgment in the conclusion it reached upon a weighing of relevant factors. *See McCollough v. Johnson, Rodenburg & Lauinger, LLC*, 637 F.3d 939, 953 (9th Cir. 2011);

Here, the District Court was presented evidence from Kennedy that he had disclosed that he was not an attorney at the time on filing his Declaration of Candidacy on March 10, 2022, and that he was told it didn't matter. The District Court completely disregarded Kennedy's assertions creating culpability on the Secretary of State. Further, as noted *supra*, Kennedy advised that multiple state notices about running for office were outdated and did not reflect the new requirement that the candidate must be a member of the State Bar. The District Court further disregarded Kennedy's request to be removed from the ballot and withdrawn from the race.

2. Review of Denial of Preliminary Injunction

A preliminary injunction is available when the moving party can demonstrate that the nonmoving party's conduct, if allowed to continue, will cause irreparable harm for which compensatory relief is inadequate and that the

moving party has a reasonable likelihood of success on the merits. *See* NRS 33.010; *University Sys. v. Nevadans for Sound Gov't*, 120 Nev. 712, 721, 100 P.3d 179, 187 (2004); *Dangberg Holdings v. Douglas Co.*, 115 Nev. 129, 142, 978 P.2d 311, 319 (1999).

A district court has discretion in deciding whether to grant a preliminary injunction. *University Sys.*, 120 Nev. at 721, 100 P.3d at 187. The district court's decision "will be reversed only where the district court abused its discretion or based its decision on an erroneous legal standard or on clearly erroneous findings of fact." *Attorney General v. NOS Communications*, 120 Nev. 65, 67, 84 P.3d 1052, 1053 (2004) (quoting *U.S. v. Nutri-cology, Inc.*, 982 F.2d 394, 397 (9th Cir. 1992)); *see S.O.C., Inc. v. The Mirage Casino-Hotel*, 117 Nev. 403, 407, 23 P.3d 243, 246 (2001).

Questions of law are reviewed de novo, even in the context of an appeal from a preliminary injunction. *University Sys.*, 120 Nev. at 721, 100 P.3d at 187; *S.O.C., Inc.*, 117 Nev. at 407, 23 P.3d at 246.

Here the District Court's failure to issue a preliminary injunction despite Kennedy's notification on March 10, 2022 that he was not an attorney licensed in Nevada, along with the failure of the Secretary of State to provide notice of the NRS 228.010 requirements, confirmed this in August, 2022 by sending an email to

the Secretary of State to remove him from the ballot and withdraw from the race, is an absolute abuse of discretion.

This matter originated as a proceeding governed by the NRS 293.2045. As such, the Constitutional rights of all parties are at issue. The important issue of law that needs clarification in this proceeding is whether NRS 293.2045(2) fails to provide the adequate relief necessary to ensure a fair election in the Nevada Attorney General race. Universal mail in ballots preclude any relief provided against voters who will have a disqualified candidate on their mail in ballot and will not be at polling locations to see any notices regarding disqualified candidate.

The District Court's ruling in this matter has wide-reaching public policy effects on how disqualified candidates are addressed with universal mail in ballots precluding disclosure of a disqualified candidate. If this issue is not immediately addressed by this Court, and this important issue of law is not immediately clarified, the integrity of the election will be compromised and a disqualified candidate will inevitably draw votes from qualified candidates on the ballot.

As noted, Stewart MacKie, a disqualified candidate in the Democratic Primary Election had drawn had 17,047 votes representing 12.3% votes from incumbent Aaron Ford, despite signs at precincts advising of his disqualification.⁸ Again, it is significant to note that in 2018, Aaron Ford won the General Election

⁸ Stuart MacKie - Ballotpedia.com

by 4,533 votes, almost 4 x less votes than what Mackie received as a disqualified candidate in this past primary, with signs notifying voters of his disqualification at all voting precincts.

Based on all of the foregoing, there is an important issue of law involved in this proceeding and considerations of sound judicial economy and administration militate in favor of overturning the District Court to provide legal guidance to everyone, including current candidates and future candidates. This issue is one of first impression in Nevada, is an entirely legal issue, and there are no disputed factual issues. There is a strong public interest in an immediate resolution of this issue, and an urgent necessity to clarify and resolve this issue of law in the State of Nevada as the General Election is scheduled in 53 days while early voting begins in 37 days.

A. The Court Abused its Discretion in Denying the Preliminary Injunction

A preliminary injunction is proper where the moving party can demonstrate that it has a reasonable likelihood of success on the merits and that, absent a preliminary injunction, it will suffer irreparable harm for which compensatory damages would not suffice. *See* NRS 33.010; *Boulder Oaks Cmty, Ass'n v. B & J Andrews Enters., LLC*, 125 Nev. 397, 403, 215 P.3d 27, 31 (2009).

There are simply no compensatory damages which can suffice in this matter to rectify allowing a disqualified candidate to remain on the ballot; specifically,

since the disqualified candidate requested to be removed from same. The probability of a disqualified candidate remaining on the ballot effecting the outcome of an election is not speculative as addressed in detail *infra*.

Furthermore, it is undisputed that the NRS 193.124 requires the Secretary of State to enforce all election laws, including qualifications of a candidate required under NRS 228.010. Had the Court taken this into consideration, it would have come to the conclusion that had NRS 193.124 had been complied with, proper notice to Kennedy was given, Chattah would inevitably succeed on the merits. Especially, in light of Kennedy requesting to be removed from the ballot and withdrawing from the race.

II. IMPUTING DETERMINATION OF CANDIDATE'S QUALIFICATION CREATES AN UNDUE BURDEN ON CHATTAH

The District Court faulted Chattah for failing to object to Kennedy's qualifications within the allocated time and denied the preliminary injunction because Chattah waited 105 days to challenge Kennedy's qualifications. This imputation of responsibility on a candidate creates an undue burden on a candidate to verify the qualification of each candidate declaring that they are qualified to run.

"NRS 293.124 entitled Secretary of State to serve as Chief Officer of Elections; regulations.

1. The Secretary of State shall serve as the Chief Officer of Elections for this State. As Chief Officer, the Secretary of State is **responsible for the execution and enforcement** of the provisions of title

24 of NRS and all other provisions of state and federal law relating to elections in this State.

2. The Secretary of State shall adopt such regulations as are necessary to carry out the provisions of this section.
[*Emphasis added*]

The District Court's determination that under NRS 293.182(1) it is incumbent on an elector (or candidate) to file a qualification challenge contradicts NRS 293.124, which obligates Cegavske to enforce all state laws relating to the elections in the state. It is **Cegavske's responsibility** under NRS 293.124 to ensure that notices at the Secretary of State offices are updated to include 2021 laws passed, to wit; NRS 228.010, not Chattah's.

There is a clear law rendering qualifications of a candidate for Nevada Attorney General in the State of Nevada codified in NRS 228.010. A lack of enforcement of this law renders it futile and marginalizes its purpose of preventing unqualified candidates from running for Nevada Attorney General. The sole culpability in this failure to ensure that Kennedy was qualified under NRS 228.010 lies with Cegavske.

This remains especially true taking into consideration the email presented by Defendant Kennedy during this proceeding which reads as follows⁹:

“When I filed for my candidacy in your (Cegavske) office I was interviewed by two members of your staff, one of whom asked me if I was a lawyer. I stated that I was not, but that it was my understanding

⁹ See Kennedy email Appx Ex. 3; SC0063

that this was not a requirement to run for the office. She verbally confirmed to me that it was not a requirement.”

Taking all facts presented as true, as is incumbent on the District Court, it is clear that there was an utter disregard to the disclosure of the requirements of NRS 228.010. Again, under NRS 293.124, it is Cegavske’s obligation to enforce all provisions of state and federal law relating to elections in this State, including the disqualification and removal of a disqualified candidate from the General Election ballot.

The Court’s decision imputing the responsibility to research and challenge an unqualified candidate, places an undue burden on the elector or candidate to engage in. It cannot be reasonably contemplated that it is a candidate’s responsibility to ensure that NRS 228.010 is disclosed and followed and ensure that a purported candidate meets the qualifications to run for Attorney General. Particularly in this case, where Kennedy himself notified the Secretary of State at the time of his time of filing the Declaration of Candidacy that he was not an attorney in Nevada. It was the failure of the Secretary of State’s office at the outset, to provide the Notice of 228.010 and preclude him from filing for this office.

The Court placed the onerous responsibility of enforcement of NRS 228.010 on Chattah, where it is clear that placing such a burden on a Candidate is not the intent of NRS 293.124.

III. CHATTAH WILL SUFFER IRREPARABLE HARM IF KENNEDY REMAINS ON THE BALLOT

Irreparable harm is an injury "for which compensatory damage is an inadequate remedy." *Excellence Cmty. Mgmt., LLC v. Gilmore*, 351 P.3d 720 (2015), *Dixon v. Thatcher*, 103 Nev. 414, 415, 742 P.2d 1029, 1029 (1987). Here there is no compensatory damages available as an adequate remedy. Irreparable harm is presumed by the nature of this case and therefore, the Court's position that irreparable harm is speculative is fatally flawed.

There are no compensatory damages that could compensate for a disqualified candidate receiving votes because his name remains on the ballot. This is further compounded by the following facts:

- Notices at the office of the Secretary of State were outdated and did not incorporate any of NRS 228.010.
- The candidate notified the Secretary of State that he was not a licensed attorney when he filed his Declaration of Candidacy on March 10, 2022
- On July 26, 2022, the Secretary of State again, was placed on notice that this candidate was not qualified to run for the office of attorney general.

It is significant to note that again, the Secretary of State took no measures to mitigate any costs or even investigate whether the Complaint filed by Chattah was valid.

- On August 17, 2022, Cegavske issues a correspondence, neither acknowledging the merit of the Complaint or acknowledging qualification but simply indicating that the time has passed to challenge a candidate.
- On August 26, 2022, Kennedy requested to be withdrawn from the race and have his name removed from the ballot.
- His requests were ignored and per the Affidavit submitted by Wlaschin, Kennedy lied in his email to the Secretary of State and never told their offices he wasn't a licensed attorney.

Furthermore, despite the fact that the Court was presented with information regarding Stuart MacKie's almost 17,000 votes drawn as a candidate on the ballot in the Democratic Primary Election, the Court refused to accept the plausibility of Kennedy's impact on the Attorney General Race, calling it speculative. The fact that Kennedy notified the Secretary of State in his August 26, 2022 email, that he wanted his name removed from the ballot and withdrawn from the race, was also ignored by the Court without explanation for same. Even when, according to Wlaschkin's Declaration, changes could have been made until September 7, 2022.¹⁰

¹⁰ See Appx. Ex.4 SC0066 ¶8.

IV. THE COURTS RELIANCE ON HEARSAY EVIDENCE WAS AN ERROR

The District Court required Defendants to provide proof of costs to modify the mail in ballots. At the time of the hearing, it was abundantly clear that ballots had **not been printed** as confirmed by Wlaschkin's Declaration. There was no evidence of any prejudicial effect or associated costs of having the Court enjoin the Secretary of State to modify the mail in ballots removing the disqualified candidate.

Instead, the Court relied on hearsay testimony from Wlaschkin as to purported figures were provided to him orally by someone at Runbeck Election Services. No other evidence was presented from Runbeck Election Services as to any prejudicial effect by incurring costs the removal would have caused.

The Court rested the whole analysis of public interest not paying for ballot corrective action, on hearsay evidence, unsupported by anything but a Declaration from Wlaschkin even acknowledging what the corrective action would involve since ballots were not printed.

V. CHATTAH HAS A REASONABLE LIKELIHOOD OF SUCCESS ON THE MERITS AS NRS 193.124 REQUIRES CEGAVSKE TO ENFORCE ELECTION LAWS.

It is undisputed that NRS 193.124 classifies Cegavske as the Chief Elections Officer in charge of enforcing all election laws across the State. As a qualification of candidacy law to run for Attorney General, NRS 228.010 is an election law

providing the requirements to qualify as Nevada Attorney General. Had Cegavske provided notice of NRS 228.010, verified and enforced election and qualification laws in Nevada, it is clear that not only Stuart MacKie would not have been on the ballot in the primary but also, the case *sub judice* would be moot. The ultimate result of this analysis is the categorical failure of the Secretary of State to assure the minimum safety measures in the Attorney General race by simply placing candidates on notice of the requirements to hold the office.

This is especially egregious because in Kennedy's case, his disclosure of his lack of qualification at the time for filing the Declaration of Candidacy on March 10, 2022, makes this matter even more egregious and troublesome.

Taking as true all Kennedy's statements, it is abundantly clear that Cegavske was grossly negligent in the administration of the process of Declaration of Candidacy. Furthermore, the failure to verify for three weeks and discuss with Kennedy his disqualification demonstrates that the negligence was compounded.

Finally, even with the opportunity to present evidence of the purported financial burden to have the ballots printed were met with failure. As a matter of fact, there was no proof that ballots had been printed and or any evidence of a hardship on the public to correct the unprinted ballots.

The failure to address all these issues makes it clear that had the Court examined them, Chattah would enjoy unequivocal success on the merits.

CONCLUSION

Based upon all of the foregoing, Appellant respectfully requests that this Court overturn the District Court's denial of an injunction enjoining Defendant Cegavske to remove the disqualified Candidate John T. Kennedy from the General Election Ballot. This Court should ensure that the effects of having a disqualified candidate on the ballot can be mitigated in the maximum possible way to prevent a contested election resulting therefrom.

DATED this 15th day of September, 2022.

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AFFIDAVIT

STATE OF NEVADA }
COUNTY OF CLARK } ss.

JOSEPH GILBERT, being first duly sworn, deposes and says:

That he is a member of the law firm of the Joey Gilbert Law, attorneys for Appellants in the above-entitled action, that he has read the above and foregoing, **APPELLANT'S OPENING BRIEF**, knows the contents thereof, and that the same is true of his own knowledge, except as to those matters therein stated on information and belief, and as to those matters, he believes them to be true.

This verification is made pursuant to NRS 15.010.

DATED this 15th day of September, 2022.

/s/ Joseph S. Gilbert

JOSEPH S. GILBERT

CERTIFICATE OF COMPLIANCE-NRAP 32(A)(9)

I am the attorney for Appellant. This brief contains 5099 words, is written in Times New Roman 14-point typeface. I certify that this brief with the word limit of NRAP 32(a)(4)-(6).

/s/ Joseph S. Gilbert

JOSEPH S. GILBERT

CERTIFICATE OF SERVICE

The undersigned, an employee of JOEY GILBERT LAW, hereby certified that on the 20th day of September, 2022, she served a true and correct copy of the foregoing, **APPELLANT’S OPENING BRIEF**, via the Court’s E-Flex Electronic Filing System to the following:

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